IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1692 OF 2006

Shri. Ravindra Kashiram Goregaonkar ..... Applicant

Versus

The State of Maharashtra ..... Respondent

Mr. Sudeep Pasbola Advocate for Applicant.

Ms. S.U. Gajre for the State.

CORAM : A.S. OKA, J.

DATE : 30TH JUNE, 2006

P.C.

1. Heard Shri. Sudeep Pasbola Advocate for the applicant. As the earlier bail application made by the applicant has been rejected by me, as per the administrative order passed by Hon'ble the Chief Justice on 2nd May, 2006, this bail application has been placed before me.

2. The second bail application is made by an applicant who is an accused in C.R. No. 270 of 2004 registered at N.M. Joshi Marg Police Station on 23rd

December, 2004 for offences punishable under Sections 304, 328, 272, 120-B of the Indian Penal Code and Sections 66(1)(b) and 65(e) of the Bombay Prohibition Act. The allegation of the prosecution is that large number of persons consumed poisonous illicit liquor at the den of applicant. As a result of consumption of poisonous liquor, 23 persons lost life and other 25 became seriously ill.

3. The learned counsel appearing for the applicant invited my attention to the decision of the Apex Court in the case of BABU SINGH AND OTHERS Vs. STATE OF U.P. (1978 S.C. Cases (Cri.) 133) and submitted that an order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. The submission of learned counsel for the applicant is that the applicant has played no role in actual preparation of illicit liquor, as according to the case of prosecution, one Bala Mhatre and one Pandit Kalan have done the said job. He submitted that there is absolutely no material to show that the applicant had any knowledge that the liquor served at his den was a poisonous liquor. He submitted that under the same order, two co-accused have been enlarged on bail and therefore on the ground of parity the applicant is entitled to be enlarged on bail. He submitted that though there may not be any substantial change in the circumstances, different material and

different considerations will have to be considered while considering the second bail application.

4. In a recent decision of the Apex Court in the case of Kalyan Chandra Sarkar Versus Rajesh Ranjan Alias Pappu Yadav and another reported in 2005 Supreme Court Cases (Criminal) 489, the Apex Court has laid down law relating to scope of second or successive bail application. Paragraphs 19 and 20 of the said decision read thus :

> 19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later state when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitaged on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice

andl may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bailmatters unless of course, there is a material change in the fact situationcalling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change ion the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bailearlier, can lmove a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground rejected by the courts earlier, including the Apex Court of the country."

5. The Judgment in the case of Babu Singh (Supra) is delivered by a Bench of two Hon’ble Judges. The

decision in the case of Kalyan Chandra Sarkar (Supra) is by a larger Bench. The submissions which are sought to be made in this application have have been already canvassed earlier. There is nothing on record to show that there is a material change in the fact situation calling for a different view being taken. It cannot be said that the earlier findings which are recorded in earlier bail application have become obsolete.

6. There is no merits in the second bail application and the same is rejected.

(A.S. OKA, J.)